

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.645 of 2022

Arising Out of PS. Case No.-363 Year-2022 Thana- NAWADA District- Nawada

Md. Shahid Imam, Son of Late Md. Sajid Khan, Resident of Village - Islam Nagar, Par Nawadah, P.S.- Nawadah Town, Distt.- Nawadah.

... .. Petitioner

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. South Bihar Power Distribution Company Ltd. through its Managing Director, having its Office at Bidyut Bhawan, Patna.
3. The Executive Engineer, Electric Supply, Division Nawadah
4. The Junior Electrical Engineer, Electric Supply, Nawadah (West), Distt.- Nawadah.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Arun Kumar, Advocate
For the State	:	Mr. Sheo Shankar Prasad, SC-8
For the Respondents	:	Mr. Sanjay Kumar Giri, Advocate
		Mr. Mritunjay Harsh, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 22-06-2026

The present writ petition has been preferred by the Petitioner seeking quashing of the First Information Report bearing Nawadah Town P.S. Case No. 363 of 2022, registered for the offence punishable under Section 135 of the Bihar Electricity Act, 2003.

2. The sum and substance of the allegation against the Petitioner as per the written report is that on raid by the officials of the Electricity Department, the Petitioner was found to be consuming electricity in his domestic campus despite its



disconnection on 04.01.2021 on account of over due of an amount of Rs.5,39,126/-. It is further alleged that without payment of the due amount and without obtaining R.C receipt, electricity was being consumed. The Consumer Number of the domestic connection was 100453396. The total sanctioned load of the domestic connection of the Petitioner was 1 Kwh. It is also claimed that on account of unauthorized consumption of the electricity, SBPDCL has suffered a loss of Rs.1,96,811/- as per the inspection/seizure report annexed with the written report.

3. I heard learned counsel for the Petitioner and learned counsel for the SBPDCL, Mr. Sanjay Kumar Giri.

4. Learned counsel for the Petitioner submits that the Petitioner is innocent and has falsely been implicated in this case. However, he admits that there was an outstanding due of electricity charges to be paid by the Petitioner, but his domestic connection was never disconnected. He refers to the inspection notes annexed with the FIR also to argue that even the inspection notes does not show that the meter was anyhow tampered, despite being such column in the inspection notes. Hence, he argues that he has never consumed the electricity dishonestly. His meter was running as it was and he is willing to



pay the electricity charges in accordance with law. As such, no case is made out under Section 135 of the Electricity Act, though he may have civil liability to pay the due electricity charge to the SBPDCL.

5. However, learned counsel for the SBPDCL defends the FIR showing that the electricity has been consumed dishonestly, despite disconnection of his domestic connection on account of overdue of the electricity charge to be paid by the Petitioner to the SBPDCL. He further submits that as per the inspection report, the Petitioner was found to be using the electricity and the meter was running, and at the time of disconnection i.e on 04.01.2021 the reading of the meter was 59425 Kwh. whereas on the date of raid i.e on 19.04.2022, the reading of the meter was 71412 Kwh.

6. Before I consider the rival submissions of the parties and peruse the material on record, it would be pertinent to point out that Section 135 of the Electricity Act, 2003 deals with theft of electricity and punishment therefor, whereas Section 126 provides for assessment of electricity charges to be payable on account of unauthorized use of electricity.

7. Here, it would be profitable to refer to **Southern Electricity Supply Co. of Orissa Ltd. Vs. Sri Seetaram Rice**



Mill, (2012) 2 SCC 108 where Hon'ble Supreme Court has lucidly explained not only meaning and import of Section 126 and 135 of the Electricity Act but even the distinction between the two, holding as follows:

“1(b) Distinction between Sections 126 and 135 of the 2003 Act

24. Upon their plain reading, the marked differences in the contents of Sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. We have already noticed that Sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under Section 135 of the 2003 Act.

25. Section 135 of the 2003 Act falls under Part XIV relating to “offences and penalties” and title of the section is “theft of electricity”. The section opens with the words “whoever, dishonestly” does any or all of the acts specified under clauses (a) to (e) of sub-section (1) of Section 135 of the 2003 Act so as to abstract or consume or use electricity shall be punishable for imprisonment for a term which may extend to three years or with fine or with both. Besides imposition of punishment as specified under these provisions or the proviso thereto, sub-section (1-A) of Section 135 of the 2003 Act provides that without prejudice to the provisions of the 2003 Act, the licensee or supplier, as the case may be, through officer of rank authorised in this behalf by the appropriate commission, may immediately disconnect the supply of electricity and even take other measures enumerated under sub-sections (2) to (4) of the said section. The fine which may be imposed under Section 135 of the 2003 Act is directly proportional to the number of convictions and is also dependent on the extent of load abstracted.

26. In contradistinction to these provisions, Section 126 of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression “unauthorised use of electricity”. This assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in



an “unauthorised use of electricity”. Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms of Section 126(2) of the 2003 Act.

27. The officer is also under obligation to serve a notice in terms of Section 126(3) of the 2003 Act upon any such consumer requiring him to file his objections, if any, against the provisional assessment before a final order of assessment is passed within thirty days from the date of service of such order of provisional assessment. Thereafter, any person served with the order of provisional assessment may accept such assessment and deposit the amount with the licensee within seven days of service of such provisional assessment order upon him or prefer an appeal against the resultant final order under Section 127 of the 2003 Act. The order of assessment under Section 126 and the period for which such order would be passed has to be in terms of sub-sections (5) and (6) of Section 126 of the 2003 Act. The Explanation to Section 126 is of some significance, which we shall deal with shortly hereinafter. Section 126 of the 2003 Act falls under Part XII and relates to investigation and enforcement and empowers the assessing officer to pass an order of assessment.

28. Section 135 of the 2003 Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of criminal jurisprudence and mens rea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the 2003 Act does not speak of any criminal intent and is primarily an action and remedy available under the civil law. It does not have features or elements which are traceable to the criminal concept of mens rea.

29 [Ed.: Para 29 corrected vide Official Corrigendum No. F.3/Ed.B.J./2012 dated 26-3-2012.] . Thus, it would be clear that the expression “unauthorised use of electricity” under Section 126 of the 2003 Act deals with cases of unauthorised use, even in the absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under Section 135 of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the 2003 Act. On the other hand, where a



consumer, by any of the means and methods as specified under Sections 135(a) to 135(e) of the 2003 Act, has abstracted energy with dishonest intention and without authorisation, like providing for a direct connection bypassing the installed meter, the case would fall under Section 135 of the Act.

30. Therefore, there is a clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorised use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorised use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act.

31. Section 135 of the 2003 Act significantly uses the words “whoever, dishonestly” does any of the listed actions so as to abstract or consume electricity would be punished in accordance with the provisions of the 2003 Act. “Dishonesty” is a state of mind which has to be shown to exist before a person can be punished under the provisions of that section.

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35. All these explanations clearly show that dishonesty is a state of mind where a person does an act with an intent to deceive the other, acts fraudulently and with a deceptive mind, to cause wrongful loss to the other. The act has to be of the type stated under sub-sections (1) (a) to (1)(e) of Section 135 of the 2003 Act. If these acts are committed and that state of mind, mens rea, exists, the person shall be liable to punishment and payment of penalty as contemplated under the provisions of the 2003 Act. In contradistinction to this, the intention is not the foundation for invoking powers of the competent authority and passing of an order of assessment under Section 126 of the 2003 Act.”

8. The High Court of Chhattisgarh in Chhattisgarh State Power Distribution Co. Ltd. Vs. Dinesh Chandra, (2026 SCC OnLine Chh 10813) has also explained Section 126 and



135 of the Electricity Act, 2003 in the following words:

“13. From perusal of Sections 126 and 135 of the Act of 2003, it is quite vivid that Section 126 of the Act deals with assessment and Section 135 of the Act deals with an offence of theft of electricity and penalty that can be imposed for such theft. Section 135 of Act of 2003 squarely falls within the dimensions of criminal jurisprudence and *mens rea* is one of the relevant factors for finding a case of theft and it is applicable to whoever dishonestly does any of the listed actions defined under this section so as to obstruct or consume electricity would be punished with the provisions of the Act of 2003. Dishonesty is a state of mind which has to be shown to exist before a person can be punished under the provisions of that section. The word “dishonest” in normal parlance means “wanting in honesty”. A person can be said to have dishonest intention if in taking the property it is his intention to cause gain, by unlawful means of the property to which the person so gaining is not legally entitled or to cause loss by wrongful means, of property to which the person so losing is legally entitled. The word “Dishonestly” has been defined in Section 24 of the Penal Code, 1860. It means whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly.”

9. Now coming back to the case on hand, I find that undisputedly, there was some outstanding due of electricity charge payable by the Petitioner to the SBPDCL. However, the claim of the SBPDCL that the electricity connection of the Petitioner was disconnected is not supported by the material on record, because nowhere, either in the FIR or in the Inspection notes annexed with the written report, there is any reference to tampering of the meter, or showing that the electricity connection of the Petitioner was cut and the meter was sealed. It



is also not mentioned in the inspection report that at the time of raid, the meter was found tampered or the Petitioner was consuming the electricity by making any interpolation in the meter. On the contrary, the meter was in running condition and reading was going up as per the consumption.

10. It clearly shows that the claim of the SBPDCL that the electricity connection of the Petitioner was disconnected on account of non payment of electricity charge, is not supported by the material on record, and hence, there is no consumption of the electricity by the Petitioner dishonestly. The absence of disconnection further gets proved by running of the meter as usual without any tampering and at the time of claimed disconnection of the electricity connection of the Petitioner, the reading of the meter was 59425 Kwh. whereas on the date of raid i.e on 19.04.2022, the reading of the meter was much higher i.e 71412 Kwh. It clearly shows that the Petitioner was not consuming electricity with dishonest intention, in fact, he was using it bonafidely. The only thing against the Petitioner is that he had not paid the electricity charge due against him to the SBPDCL.

11. Hence, there may be civil liability, but there is no criminal liability as per the whole alleged facts and



circumstances. Hence, the FIR is liable to be quashed.

12. Accordingly, the present writ petition is allowed and the FIR is quashed.

13. It is clarified that the SBPDCL is at liberty to recover the electricity charges in accordance with law. Even Section 126 of the Electricity Act may be invoked if conditions precedent are fulfilled.

(Jitendra Kumar, J.)

Chandan/-

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